Current Law	Governor's Proposal SB 899 (Poochigian)	Initiative
Medical Issues		
Requires employers to provide all medical treatment necessary to "cure or relieve" an injured worker. Employers choose the doctor for the first 30 days of treatment, after which the worker may change medical provider. Currently, an employer has 90 days to accept or deny a claim with regard to medical treatment. Employee may seek medical care on a lien basis before employer resolves liability. Current law sets no occupational medicine-specific parameters on the quality of doctors from which either the employer or the employee may choose, nor does it require that an injury be proven by objective medical findings. The law requires doctors follow established utilization standards, based on the nationally recognized guidelines from the American College of Occupational and Environmental Medicine (ACOEM).	Unlimited medical control by employer – Creates an optional program which increases the time period of employer/insurer control of the doctor from the current 30 days instead to unlimited control. The employee would be allowed to choose the treating physician from a network of doctors. The network must meet certain requirements to ensure adequate and appropriate care (i.e. extensive list, geographic coverage, range of doctors, etc.). Creates an exception for rural medically under-served areas. Predesignated Personal Physician – If the employer offers group health, allows employees to pre-designate their personal physician as their workers' compensation doctor. The employee's treatment would be subject to the pre-established group health protocols. Immediate medical treatment – Currently, an employer has 90 days to accept or deny a claim from a worker that he was injured on the job – employees may seek medical care on a lien basis. Often this causes the worker to potentially wait 90 days for medical treatment. This bill requires employers to provide immediate medical care for any declared work related injury. Places a $10,000 cap on the medical treatment. Second and third opinions – If the employee is unsatisfied with treatment, the employee may seek a second opinion from another doctor within the employer pool for a given treatment and a third opinion, which is subject to ACOEM (treatment protocols). The employee may get three opinions from three different doctors. If he is still unsatisfied, he is eligible for Independent Medical Review (IMR).	Requires that treating physicians, whether pre-designated or selected thirty days after the injury occurs, be mutually agreed upon by the employer and the employee. Limits right to obtain second medical opinion. Requires compensation or medical treatment to be based on objective medical findings. Provides independent review of all medical treatment disputes. Disputes regarding the denial, modification, delay or approval of medical treatment would be decided by medical professionals. Require that the selected Qualified Medical Evaluator specialty is relevant to the type of injury for which the evaluation is sought. Evaluators will be required to support their opinions using objective medical findings. Standardized Treatment Guidelines: The diagnosis and treatment of industrial injuries will be governed by guidelines established by the American College of Occupational and Environmental Medicine. Provides for an evidence based definition of medical treatment necessary to "cure and relieve" the injury. Also Requires an employer to provide medical treatment that is "reasonably required to cure and relieve the injured worker from the effects of his or her injury," and would apply this definition to all treatment requested on or after July 1, 2004, including treatment for injuries sustained prior to that date.

Current Law	Governor's Proposal SB 899 (Poochigian)	Initiative
	Medical Issues continued: IMR – IMR will follow the current processes outlined under Knox-Keene (group health) and shall be paid for by the employer. The Administrative Director (AD) of the Division of Workers' Compensation is required to provide a list of three IMR doctors and the employee is required to select one from that list. The IMR is a "hands on" treatment, meaning it is not just a review of paperwork. If the IMR sides with the injured worker, the worker may choose a doctor outside the network (this has been referred to as a "pop-out"). This "pop-out" is for the disputed treatment only and then the patient must return to the network. Cure or relieve – Defined as treatment that is based upon the guidelines adopted by the administrative director for a medical treatment utilization schedule, that shall incorporate the evidence-based, peer-reviewed, nationally recognized standards of care – until those are developed, ACOEM shall be used. 24-hour care for union members – Allows qualifying carve-out programs in construction and other industries (only those which are unionized) to establish a seamless health and disability system, without regard to the cause of the sickness	*Medical Issues continued:* Streamlines the process for approval for Health Care Organizations (HCOs), allows both employers that provide health insurance and those that do not to use a managed care organization to cover occupational injuries. Repeal of treating physician presumption – Intent language will accomplish the repeal of the treating physician presumption for pre-designated physicians.

Current Law	Governor's Proposal SB 899 (Poochigian)	Initiative
	or disability, provided they maintain the statutory minimums for PD benefits. The option for 24-hour integrated coverage would be included within the existing carve-out programs. Repeal of treating physician presumption – Intent language will accomplish the repeal of the treating physician presumption for pre-designated physicians.	
Permanent Disability		
Permanent disability awards (cash payments) are made to injured workers in weekly payments or lump sums. The amount of the payment is based on a percentage, derived from a complicated formula. The formula uses multiple factors including the extent of injury, the injured's age and occupation, and the "diminished ability of such injured employee to compete in an open labor market." Current law bases a PD award on three considerations: Objective medical findings, subjective findings (typically the presence of pain), and work capacity restrictions. A PD award assigns one percentage disability based on objective medical findings and one based on work capacity restrictions. The disability award based on objective medical findings can be increased because of subjective findings. The higher of the two disability percentages is taken as the disability award.	Replaces the existing PD schedule with a new schedule that includes the following elements: The system shall be based on objective medical findings and shall promote uniformity and predictability of ratings. The objective factors of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition) shall be used to determine the impairment rating. Deletes the current "ability to compete in the open labor market" and replaces it with "consideration to diminished earning capacity." The AD would have latitude when writing these guidelines. Return to work would allow for a 15% PD award percentage bump down for those who are offered a job or do return to work and a 15% bump up for those who are not offered a job. Requires medical evaluations to be in accordance with descriptions and measurements used in the 5th edition of the AMA guides. Requires procedures for determining diagnosis	Retains most of the current criteria for compensating PD, but rather than compensating for "diminished capacity to compete in an open labor market" it would compensate for "adaptability to perform a given job" (Oregon). Utilizes a series of criteria to determine the extent of compensation for PD. Provides that if the worker is returned to work at the pre-injury job the injured worker is compensated for impairment only. If an employee is returned to modified work, the compensation is based on impairment, age and occupation. If the employee is not returned to work, they are compensated based on impairment, age, occupation and the newly created "adaptability to perform a given job." Revises the authority to develop a permanent disability-rating schedule to create more uniformity among ratings and to set forth the way in which various measurements of PD are to be equated. Requires the use of objective guidelines for the measurement of PD as developed by the AD. Does not mandate the use of

Current Law	Governor's Proposal SB 899 (Poochigian)	Initiative
	and treatment to be in accordance with ACOEM guidelines and where ACOEM is not applicable, with evidence-based, nationally recognized standards of care. Presumption is *PD continued:* attached to the ACOEM guidelines. Restricts the admissibility of evidence of disability or reasonableness of medical treatment to reports that comply with the procedures above. In the dispute process, requires parties to choose from the panel of Qualified Medical Evaluator (QME) rather than each hiring their own evaluator. Each side would be able to "veto" one from a three-person panel. Limits the medical eligible medical reports to the QME report and the treating physician report.	AMA Guides nor does it prohibit their use. Revises med-legal process by setting forth timeframes in which an unrepresented injured worker must select a QME for the purpose of a PD evaluation. Also repeals the second opinion process.
Causation		
Provides that an injury is "compensable" in the workers' compensation system if the workplace in any way causes the injury. (proximate cause standard) Psychiatric and post-termination claims must meet the higher predominate cause standard.	The closest this bill comes to dealing with causation relates to the requirement that permanent disability be based on causation so that liability of employer is only that which is apportioned to work-related activity.	Redefines "injury" to include a requirement that an injury must be certified by a physician using medical evidence based on objective medical findings. "Objective findings" do not include physical findings or subjective responses to physical examinations that are not reproducible, measurable, or observable. Specific injury would be compensable only if at least 10% caused by actual activities of employment. Cumulative injury would be compensable only if "substantially" caused by actual activities of employment.

Current Law	Governor's Proposal SB 899 (Poochigian)	Initiative
		No permanent disability or death benefits shall be payable unless the industrial injury is the predominant cause of the disability or death.
<u>Apportionment</u>		
Although current law provides that prior injuries should be taken into account (apportioned) when determining permanent disability (PD) awards, case law has severely restricted those statutes from being applied.	Requires medical reports to reflect information necessary to determine apportionment and provide that only such medical reports containing that information are admissible for overcoming the presumption. Provides that employee has burden of proof. Caps multiple awards so that an individual cannot get more than 100 percent disability for any single region of the body. Stipulates that in no case shall an injured worker receive cumulative awards that exceed the benefit of a total permanent disability award. Creates seven body regions – which means all seven body regions could theoretically each have 100%. Requires an employee to disclose all previous relevant compensated injuries. Requires disclosure of all relevant non-occupational labor disabling injuries. Creates a presumption that a previously compensated permanent partial disability (PPD) injury still exists – applies to actual PD awards and those that are estimated in the compromise and release process. (Current law places the burden on the employer to prove that a prior injury still exists,	No permanent disability or death benefits shall be payable unless the industrial injury is the predominant cause of the disability or death. Lifetime total of all PD awards shall not exceed 100% unless a disability is conclusively presumed to be total (loss of both eyes, loss of both hands, total paralysis, or brain injury causing incurable imbecility or insanity). Any prior PD awarded is conclusively presumed to continue to exist. Any prior PD claimed must be fully addressed and explained by a medical report before the appeals board may rely on that report to deny apportionment

Current Law	Governor's Proposal SB 899 (Poochigian)	Initiative
	even when it was an injury that received a PD award.) Apportions PD awards based on prior illnesses or conditions.	
	5814 Penalties	
In Labor Code Section 5814, a late payment to a worker can result in a 10% penalty on the entire specie of award, not just the late payment. (i.e. late medical payment could result in a 10% penalty on all medical costs)	Penalty would be 25% of the late payment. In all cases, there would be a $10,000 cap on a 5814 penalty. If an insurer discovered that they failed to pay a claim on time or at the right amount, they can "self-correct" (also known as right to repair) by sending it off with an additional 10 percent added to the late portion. This must be done within 90 days and before a 5814 complaint was filed. Attorney fees will be on top of the award. The AD would establish penalties for "pattern and practice" to crack down on bad actor insurers. Any employer or insurer that knowingly violates Section 5814 with a frequency that indicates a general business practice is liable for administrative penalties of not to exceed $250,000 or $400,000 (yet to be determined). Penalty payments shall be deposited into the Return-to-Work Fund established by the legislation. Creates a two year statute of limitations for filing a 5814 claim.	Makes the penalty 15% of the amount of the benefit delayed or $500, whichever is greater. Provides notice and right to cure by payment of an additional self-imposed penalty of 10% of the payment delayed or refused.

Current Law	Governor's Proposal SB 899 (Poochigian)	Initiative
Temporary Disability		
Temporary disability payments are provided to injured workers to replace their wages while they are unable to work. Weekly temporary disability awards are significantly higher than weekly permanent disability awards. In some rare cases, *Temporary Disability continued:* TD payments can be greater than the wage one was earning prior to the injury.	Creates a cap on aggregate disability payments for a single *TD continued* injury occurring on or after the effective date of this bill, causing temporary disability to not extend for more than 104 compensable weeks within a period of two years from the date *Temporary Disability continued:* of commencement of TD. The following injuries would be exempted from this two-year cap and instead would get 240 weeks: Acute and Chronic Hepatitis B and C Amputations Severe burns HIV High velocity eye injuries Chemical burns to the eyes Pulmonary fibrosis Chronic lung disease	No Proposal
Liberal Construction		
Requires that workers' compensation provisions be liberally construed by the courts. Also prohibits this provision from being construed as relieving a party or a lien claimant from meeting the evidentiary burden of proof by a preponderance of the evidence.	This bill repeals current law provisions and instead states that all workers' compensation findings of fact shall be interpreted in an impartial and balanced manner in order that all parties are considered equal before the law. All parties and lien claimants shall meet the evidentiary burden of proof on all	Also repeals current law provisions, and instead provides that all laws and finding of fact shall be interpreted such that all parties are considered equal before the law.

Current Law	Governor's Proposal SB 899 (Poochigian)	Initiative
	issues by a preponderance of the evidence.	
<u>User Funding /Return to Work Program</u>		
Division of Workers' Compensation is funded by 20% employer and 80% General Fund revenues. The Return-to-Work program was created by AB 749 but was never funded because it was to be a general fund program. The program was to provide grants to small employers (100 or *<u>User Funding continued:</u>* less) to offset the cost of returning an injured worker to work. The grants were to offset salaries and increased insurance costs.	Changes the formula for the support of the Division of *<u>User Funding continued:</u>* Workers' Compensation from 20% employer / 80% General Fund instead to 100% employer-funded. (Note: this was also done in AB 227 last year, but was chaptered out of existence by Recalled Governor Davis.) The employer assessment money can also be used for the "Return to Work Program" set forth in Labor Code Section 139.48 (created by AB 749 in 2002, which Republicans did not support). That program is also the recipient of money collected for 5814 penalties for "pattern and practice" violations. The Return to Work Program is supposed to benefit small employers who have 50 or less employees and will provide a grant for workplace modifications. The program has a two-year sunset.	
<u>Insurance Issues</u>		
<u>IIPP</u> – Via last year's SB 228, contains language relating to the injury and illness prevention program (IIPP) but did not attach an experience modification rating requirement.	<u>Market Study</u> - Authorizes an independent study of workers' compensation insurance rates. The study will look at the market to see if rates reflect reform savings. The Insurance Commissioner and the Governor would make recommendations to the Legislature on future insurance market structural issues.	Repeals the requirement for insurers to conduct evaluations of injury prevention programs.

Current Law	Governor's Proposal SB 899 (Poochigian)	Initiative
	Billing to code – Requires medical providers to include a billing code in their bills to give insurance companies and self-insured administrators the ability to assure that the bill is not in excess of the fee schedule – amounts to more itemization. Code clean up – Extends immunity from reporting fraud to make sure that all entities have immunity for proper reporting. Also consolidates all the fraud provisions away from the Labor Code and instead into the Insurance Code. IIPP- Requires an insurer to inspect the IIPP within 6 months of the initial policy term. Currently, this time frame is only 4 months. This also allows the insurer to use an in-house reviewer for IIPP purposes. Only employers with an experience modification rating of 2.0, which is considered high because there are a lot of injuries, will qualify for the IIPP requirements. Since the universe of employers who are covered by this program is decreased, insurance companies benefit, thus driving down their costs.	
SB 796 Issues		
SB 796 created the "Private Attorneys General Act" which allows private citizens to sue employers over Labor Code violations. This effectively eliminates workers' compensation as an exclusive remedy.	Clarifies that Division 1 of workers' compensation is also excluded.	This reform would clarify that complaints related to discrimination based on the filing of workers' compensation claims and related to the enforcement of benefit payment requirements are resolved by the enforcement mechanisms in the workers' compensation system and not civil courts.

Current Law	Governor's Proposal SB 899 (Poochigian)	Initiative
Workers' Compensation for Prisoners		
Generally provides that inmates of a correctional institution are entitled to workers' compensation benefits for an injury arising out of, and in the course of, assigned employment and for the death of the inmate if the injury proximately causes death.	No Proposal	Prohibits an inmate of a correctional institution from being eligible for temporary or permanent disability benefits. Inmates are only entitled to receive medical care.